

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ANTONIO G. ROBLES,

Case No. 1:22-cv-00620-ADA-CDB (PC)

Plaintiff,

ORDER GRANTING PLAINTIFF'S
MOTION *NUNC PRO TUNC* FOR
EXTENSION OF TIME TO FILE
AMENDED COMPLAINT; AND
ORDER DENYING REQUEST FOR
APPOINTMENT OF COUNSEL

10

STEVEN JOHNSON, *et al.*

Defendants.

(Doc. 10)

ORDER VACATING FINDINGS AND RECOMMENDATIONS

(Doc. 9)

ORDER DISCHARGING ORDER TO SHOW CAUSE

(Doc. 8)

AUGUST 31, 2023, DEADLINE

Plaintiff Antonio G. Robles is a state prisoner proceeding pro se and *in forma pauperis* in this civil rights action filed under 42 U.S.C. § 1983.

I. FIRST AMENDED COMPLAINT

On April 26, 2023, the Court entered a screening order finding the complaint failed to state a cognizable Eighth Amendment claim and did not allege exhaustion of Plaintiff's state claims. (Doc. 7.) The Court granted Plaintiff leave to file a first amended complaint within

1 twenty-one days and warned that “failure to comply with this order may result in an order of
 2 dismissal or a recommendation that the petition be dismissed pursuant to Local Rule 110.” (*Id.*)

3 After Plaintiff failed to respond to the order, on May 31, 2023, the Court entered an order
 4 to show cause why the action should not be dismissed or to file a first amended complaint within
 5 fourteen days. (Doc. 8.) The Court advised: “**Failure to comply with this Order will result in a**
 6 **recommendation for the dismissal of this case, without further notice, for failure to state a**
 7 **claim, failure to comply with a court order, and failure to prosecute.**” (*Id.* at 2) (alteration in
 8 original).

9 Plaintiff failed to respond to the order to show cause. Therefore, on June 22, 2023, the
 10 Court issued findings and recommendations to dismiss this case with prejudice for Plaintiff’s
 11 failure to state a claim, failure to comply with a court order, and failure to prosecute. (Doc. 9.)
 12 The Court advised Plaintiff that he could file written objections to the findings and
 13 recommendations within fourteen days. (*Id.*) Plaintiff filed no objections.

14 During the pendency of the findings and recommendations, Plaintiff filed the instant
 15 motion for an extension of time to file a first amended complaint. (Doc. 10.) As grounds,
 16 Plaintiff advises he has suffered from a severe mental health crisis and has been unable to
 17 conduct legal work. (*Id.*) For good cause shown, the Court grants Plaintiff’s request and extends
 18 the deadline for filing a first amended complaint to August 31, 2023. Further, the Court
 19 concludes that the conduct cited in the order to show cause constitutes excusable neglect. *See In*
 20 *re Veritas Software Corp. Sec. Litig.*, 496 F.3d 962, 973 (9th Cir. 2007). Accordingly, the Court
 21 finds good cause to discharge the order to show cause. (Doc. 8).

22 **II. APPOINTMENT OF COUNSEL**

23 Plaintiff also requests the appointment of a lawyer because his “mind is numb and empty
 24 from the medication and the trauma of my mental health crisis.” (Doc. 10 at 3.)

25 Plaintiffs do not have a constitutional right to appointed counsel in section 1983 actions.
 26 *Rand v. Rowland*, 113 F.3d 1520, 1525 (9th Cir. 1997), *modified on other grounds by Rand v.*
 27 *Rowland*, 154 F.3d 952, 954 n.1 (9th Cir. 1998) (noting the panel opinion concerning
 28 appointment of counsel was not affected by the Court’s en banc review and is not withdrawn) (en

1 banc). The district courts lack authority to require counsel to represent indigent prisoners in
2 section 1983 cases. *Mallard v. U.S. Dist. Ct. for the S. Dist. of Iowa*, 490 U.S. 296, 298 (1989).
3 However, in certain exceptional circumstances, the court may request the voluntary assistance of
4 counsel pursuant to section 1915(e)(1). *Rand*, 113 F.3d at 1525.

5 Without a reasonable method of securing and compensating counsel, the Court seeks
6 volunteer counsel only in the most serious and exceptional cases. In determining whether
7 “exceptional circumstances exist, the district court must evaluate both the likelihood of success
8 on the merits [and] the ability of the [plaintiff] to articulate his claims pro se in light of the
9 complexity of the legal issues involved.” *Rand*, 113 F.3d at 1525 (internal quotation marks and
10 citations omitted). A likelihood of success on the merits determination is not the same as that
11 required at screening; at screening, the Court is tasked with determining whether a plaintiff has
12 sufficiently and plausibly alleged a cause of action or claim entitling the plaintiff to relief. At this
13 stage of the litigation, the merits of the allegations are not tested because the Court accepts factual
14 allegations as true for purposes of screening.

15 The Court must also evaluate Plaintiff’s ability to articulate his claims pro se in light of
16 the complexity of the legal issues involved. *Rand*, 113 F.3d at 1525. While the Court recognizes
17 Plaintiff is at a disadvantage due to his *pro se* status and incarceration, the test is not whether
18 Plaintiff would benefit from the appointment of counsel. *See Wilborn v. Escalderon*, 789 F.2d
19 1328, 1331 (9th Cir. 1986). The test is whether exceptional circumstances exist.

20 There is little doubt most *pro se* litigants “find it difficult to articulate [their] claims,” and
21 would be better served with the assistance of counsel. *Id.* For this reason, in the absence of
22 counsel, federal courts employ procedures that are highly protective of a *pro se* litigant’s rights.
23 *See Haines v. Kerner*, 404 U.S. 519, 520 (1972) (holding *pro se* complaint to less stringent
24 standard) (per curiam). In fact, where a plaintiff appears *pro se* in a civil rights case, the court
25 must construe the pleadings liberally and afford the plaintiff any benefit of the doubt. *Karim-*
26 *Panahi v. Los Angeles Police Dep’t*, 839 F.2d 621, 623 (9th Cir. 1988). The rule of liberal
27 construction is “particularly important in civil rights cases.” *Ferdik v. Bonzelet*, 963 F.2d 1258,
28 1261 (9th Cir. 1992). Thus, where a *pro se* litigant can “articulate his claims” in light of the

1 relative complexity of the matter, the “exceptional circumstances” that might warrant the
2 appointment of counsel do not exist. *Wilborn*, 789 F.2d at 1331; *accord Palmer v. Valdez*, 560
3 F.3d 965, 970 (9th Cir. 2009); *see also Robinson v. Cryer*, No. 1:20-cv-00622-HBK (PC), 2021
4 WL 9541411, at *1 (E.D. Cal. Jan. 11, 2021) (“Although Plaintiff is proceeding pro se and is
5 incarcerated, he faces the same obstacles all pro se prisoners face”).

6 An incapacitating mental disability may be grounds for appointment of counsel in some
7 cases, but a plaintiff making that argument must present substantial evidence of incompetence
8 such as medical records. *West v. Dizon*, No. 2:12-cv-1293 DAD P, 2014 WL 114659, at *4 (E.D.
9 Cal. Jan. 9, 2014) (citing *McElroy v. Cox*, 2009 WL 4895360 at *2 (E.D. Cal. Dec. 11, 2009)).
10 The fact that a plaintiff suffers from mental health conditions is not sufficient to establish
11 exceptional circumstances. Plaintiff must identify the conditions he suffered from, explain how
12 they prevented him from proceeding without counsel, and provide medical documentation to
13 support his claimed impairments and their effect on his functioning. *Bouie v. Smith*, No 2:18-cv-
14 2040 KJM AC P, 2021 WL 1877253, at *1 (E.D. Cal. Mar. 24, 2021). Even if a plaintiff provides
15 medical records confirming his mental health diagnosis and he suffers from some difficulties, the
16 records must establish he is so impaired that he is unable to pursue this case without assistance of
17 counsel. *Escamilla v. Oboyle*, No. 2:22-cv-2038 KJM AC P, 2023 WL 2541773, at *1 (E.D. Cal.
18 Mar. 16, 2023).

19 The Court has screened the complaint and finds that this case does not present complex
20 legal issues, and Plaintiff was able to articulate his claims and supporting factual allegations
21 competently. Moreover, Plaintiff has not presented substantial evidence of incompetence such as
22 medical records. Many inmates with mental illnesses are able to adequately articulate their claims
23 without assistance, and he has thus far plaintiff has demonstrated that he is capable of doing so.

24 Therefore, Plaintiff’s request for appointment of counsel (Doc. 10) is denied without
25 prejudice. If Plaintiff renews his request, he must identify his mental health conditions, explain
26 how they prevent him from proceeding without counsel, and provide medical documentation to
27 substantiate his allegations of impairments and their effect on his functioning. *Bouie*, 2021 WL
28 1877253, at *1.

1 **III. CONCLUSION**

2 Accordingly, it is hereby ORDERED:

3 1. Plaintiff's motion for an extension of time (Doc. 10) is GRANTED. Plaintiff shall
4 file a first amended complaint on or before **August 31, 2023**, or a notice of
5 voluntary dismissal if he no longer wishes to pursue this action;

6 2. Plaintiff's request for appointment of counsel (Doc. 10) is DENIED WITHOUT
7 PREJUDICE;

8 3. The findings and recommendations issued on June 22, 2023 (Doc. 9), are
9 VACATED;

10 4. The Court's order to show cause (Doc. 8) is DISCHARGED; and

11 5. The Clerk of Court is directed to send Plaintiff a civil rights complaint form.

12 **If Plaintiff fails to comply with this Order, the Court will recommend that this action be**
13 **dismissed for failure to state a claim and failure to obey a court order.**

14 IT IS SO ORDERED.

15 Dated: August 9, 2023


UNITED STATES MAGISTRATE JUDGE

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